
SUBSTITUTE HOUSE BILL 2416

State of Washington

57th Legislature

2002 Regular Session

By House Committee on Select Committee on Community Security
(originally sponsored by Representatives Hurst, Lisk, O'Brien,
Ballasiotes, Buck, Kirby, Lovick and Haigh)

Read first time 01/31/2002. Referred to Committee on .

1 AN ACT Relating to terrorism investigations pursuant to the privacy
2 act; amending RCW 9.73.240; adding new sections to chapter 9.73 RCW;
3 creating a new section; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** It is the intent of the legislature to
6 prevent terrorist attacks, and thereby save the lives of Washington
7 residents by providing appropriate investigative tools that facilitate
8 and promote cooperation between local, state, and federal law
9 enforcement agencies, that remove barriers to cooperation in terrorism
10 investigations, and that continue to protect the privacy rights of
11 residents of the state.

12 NEW SECTION. **Sec. 2.** A new section is added to chapter 9.73 RCW
13 to read as follows:

14 The attorney general or any deputy or assistant attorney general
15 specifically designated by the attorney general, or a prosecuting
16 attorney or any deputy or assistant prosecuting attorney specifically
17 designated by a prosecuting attorney, may authorize an application to
18 a superior court for, and the court may grant, in conformity with

1 section 3 of this act, an order authorizing the interception, by a law
2 enforcement agency having responsibility for the investigation of the
3 offense as to which the application is made, of wire, oral, or
4 electronic communications if the interception may provide evidence of
5 an act of terrorism.

6 NEW SECTION. **Sec. 3.** A new section is added to chapter 9.73 RCW
7 to read as follows:

8 (1) Each application pursuant to section 2 of this act for an order
9 authorizing the interception of a wire, oral, or electronic
10 communication shall be made in writing upon oath or affirmation to a
11 superior court and shall state the applicant's authority to make the
12 application. Each application shall include the following information:

13 (a) The identity of the investigative or law enforcement officer
14 making the application, and the officer authorizing the application;

15 (b) A full and complete statement of the facts and circumstances
16 relied upon by the applicant, to justify his or her belief that an
17 order should be issued, including (i) details as to the particular act
18 of terrorism that has been, is being, or is about to be committed, (ii)
19 except as provided in subsection (11) of this section, a particular
20 description of the nature and location of the facilities from which or
21 the place where the communication is to be intercepted, (iii) a
22 particular description of the type of communications sought to be
23 intercepted, and (iv) the identity of the person, if known, committing
24 the offense and whose communications are to be intercepted;

25 (c) A full and complete statement as to whether or not other
26 investigative procedures have been tried and failed or why they
27 reasonably appear to be unlikely to succeed if tried or to be too
28 dangerous;

29 (d) A statement of the period of time for which the interception is
30 required to be maintained. If the nature of the investigation is such
31 that the authorization of interceptions should not automatically
32 terminate when the described type of communication has been first
33 obtained, a particular description of facts establishing probable cause
34 to believe that additional communications of the same type will occur
35 thereafter;

36 (e) A full and complete statement of the facts concerning all
37 previous applications known to the individual authorizing and making
38 the application, made to any court for authorization to intercept wire,

1 oral, or electronic communications involving any of the same persons,
2 facilities, or places specified in the application, and the action
3 taken by the court on each such application; and

4 (f) Where the application is for the extension of an order, a
5 statement setting forth the results thus far obtained from the
6 interception, or a reasonable explanation of the failure to obtain
7 results.

8 (2) The court may require the applicant to furnish additional
9 testimony or documentary evidence in support of the application.

10 (3) Upon receiving the application, the court may enter an ex parte
11 order, as requested or as modified, authorizing interception of wire,
12 oral, or electronic communications, if the court determines on the
13 basis of the facts submitted by the applicant that:

14 (a) There is probable cause for belief that a person is committing,
15 has committed, or is about to commit an act of terrorism;

16 (b) There is probable cause for belief that particular
17 communications concerning the offense will be obtained through the
18 interception;

19 (c) Normal investigative procedures have been tried and have failed
20 or reasonably appear to be unlikely to succeed if tried or to be too
21 dangerous;

22 (d) Except as provided in subsection (11) of this section, there is
23 probable cause for belief that the facilities from which, or the place
24 where, the wire, oral, or electronic communications are to be
25 intercepted are being used, or are about to be used, in connection with
26 the commission of the offense, or are leased to, listed in the name of,
27 or commonly used by such person.

28 (4) Each order authorizing the interception of any wire, oral, or
29 electronic communication under this section shall specify:

30 (a) The identity of the person, if known, whose communications are
31 to be intercepted;

32 (b) The nature and location of the communications facilities as to
33 which, or the place where, authority to intercept is to be granted;

34 (c) A particular description of the type of communication sought to
35 be intercepted, and a statement of the particular offense to which it
36 relates;

37 (d) The identity of the agency authorized to intercept the
38 communications, and of the person authorizing the application; and

1 (e) The period of time during which the interception is authorized,
2 including a statement as to whether or not the interception shall
3 automatically terminate when the described communication has been first
4 obtained.

5 (5) An order authorizing the interception of a wire, oral, or
6 electronic communication under this section shall, upon request of the
7 applicant, direct that a provider of wire or electronic communication
8 service, landlord, custodian, or other person shall furnish the
9 applicant forthwith all information, facilities, and technical
10 assistance necessary to accomplish the interception unobtrusively and
11 with a minimum of interference with the services that the service
12 provider, landlord, custodian, or such other person is according the
13 person whose communications are to be intercepted. Any service
14 provider, landlord, custodian, or other person furnishing such
15 facilities or technical assistance shall be compensated by the
16 applicant for reasonable expenses incurred in providing the facilities
17 or assistance.

18 (6) No order entered under this section may authorize the
19 interception of any wire, oral, or electronic communication for any
20 period longer than is necessary to achieve the objective of the
21 authorization, nor in any event longer than thirty days. The
22 thirty-day period begins on the earlier of the day on which the
23 investigative or law enforcement officer first begins to conduct an
24 interception under the order or ten days after the order is entered.
25 Extensions of an order may be granted, but only upon application for an
26 extension made in accordance with subsection (1) of this section and
27 the court making the findings required by subsection (3) of this
28 section. The period of extension shall be no longer than the
29 authorizing court deems necessary to achieve the purposes for which it
30 is granted and in no event for longer than thirty days. Every order
31 and extension shall contain a provision that the authorization to
32 intercept shall be executed as soon as practicable, shall be conducted
33 in such a way as to minimize the interception of communications not
34 otherwise subject to interception under this section, and must
35 terminate upon attainment of the authorized objective, or in any event
36 in thirty days. In the event the intercepted communication is in a
37 code or foreign language, and an expert in that code or foreign
38 language is not reasonably available during the interception period,
39 minimization may be accomplished as soon as practicable after the

1 interception. An interception under this section may be conducted in
2 whole or in part by employees of the state or a political subdivision
3 of the state, or by an individual operating under a contract with the
4 state or a political subdivision of the state, when acting under the
5 supervision of an investigative or law enforcement officer authorized
6 to conduct the interception.

7 (7) Whenever an order authorizing interception is entered pursuant
8 to this section, the order may require reports to be made to the court
9 that issued the order showing what progress has been made toward
10 achievement of the authorized objective and the need for continued
11 interception. The reports shall be made at such intervals as the court
12 may require.

13 (8)(a) The contents of any wire, oral, or electronic communication
14 intercepted by any means authorized by this section shall, if possible,
15 be recorded on tape or wire or other comparable device. The recording
16 of the contents of any wire, oral, or electronic communication under
17 this subsection shall be done in such a way as will protect the
18 recording from editing or other alterations. Immediately upon the
19 expiration of the period of the order, or extensions thereof, the
20 recordings shall be made available to the court issuing the order and
21 shall be sealed under the court's directions. Custody of the
22 recordings shall be wherever the court orders. The recordings shall
23 not be destroyed except upon an order of the issuing court and in any
24 event shall be kept for at least ten years. Duplicate recordings may
25 be made for use, or for disclosure pursuant to the provisions of
26 section 6 (1) and (2) of this act, for investigations. The presence of
27 the seal provided for by this subsection, or a satisfactory explanation
28 for the absence thereof, shall be a prerequisite for the use or
29 disclosure of the contents of any wire, oral, or electronic
30 communication or derivative evidence under section 6(3) of this act.

31 (b) Applications made and orders granted under this section shall
32 be sealed by the court. Custody of the applications and orders shall
33 be wherever the court directs. The applications and orders shall be
34 disclosed only upon a showing of good cause before a superior court and
35 shall not be destroyed except on order of the issuing or denying court,
36 and in any event shall be kept for at least ten years.

37 (c) Any violation of the provisions of this subsection may be
38 punished as contempt of the issuing or denying court.

1 (d) Within a reasonable time but not later than ninety days after
2 the termination of the period of an order or extensions thereof, the
3 issuing court shall cause to be served, on the persons named in the
4 order, and such other parties to intercepted communications as the
5 court may determine is in the interest of justice, an inventory which
6 shall include notice of (i) the fact of the entry of the order, (ii)
7 the date of the entry and the period of authorized interception, and
8 (iii) whether during that period wire, oral, or electronic
9 communications were or were not intercepted.

10 The court, upon the filing of a motion, may make available to any
11 such person or party or his or her counsel for inspection such portions
12 of the intercepted communications and orders as the court determines to
13 be in the interest of justice. On an ex parte showing of good cause to
14 the court, the serving of the inventory required by this subsection may
15 be postponed.

16 (9) The contents of any wire, oral, or electronic communication
17 intercepted pursuant to this section or evidence derived from such
18 contents shall not be received in evidence or otherwise disclosed in
19 any trial, hearing, or other proceeding in a court of this state unless
20 each party, not less than ten days before the trial, hearing, or
21 proceeding, has been furnished with a copy of the court order, and
22 accompanying application, under which the interception was authorized.
23 This ten-day period may be waived by the court upon a finding that it
24 was not possible to furnish the party with the order and application
25 ten days before the trial, hearing, or proceeding and that the party
26 will not be prejudiced by the delay in receiving such information.

27 (10)(a) An aggrieved person in any trial, hearing, or other
28 proceeding in or before any court, administrative law judge, hearing
29 officer or examiner, department, officer, agency, board, regulatory
30 body, legislative committee, or other similar authority of this state
31 or any political subdivision of this state may move to suppress the
32 contents of any wire, oral, or electronic communication intercepted
33 pursuant to this section, or evidence derived from such contents, on
34 the grounds that (i) the communication was unlawfully intercepted; (ii)
35 the order of authorization under which it was intercepted is
36 insufficient on its face; or (iii) the interception was not made in
37 conformity with the order of authorization.

38 Such a motion shall be made before the trial, hearing, or
39 proceeding unless there was no opportunity to make the motion or the

1 person was not aware of the grounds of the motion. If the motion is
2 granted, the contents of the intercepted wire, oral, or electronic
3 communication, or evidence derived from such contents, shall be treated
4 as having been obtained in violation of this section. The court or
5 person presiding, upon the filing of such a motion by the aggrieved
6 person, may make available to the aggrieved person or his or her
7 counsel for inspection such portions of the intercepted communication
8 or derivative evidence as the court or person presiding determines to
9 be in the interest of justice.

10 (b) In addition to any other right to appeal, the state or other
11 proponent of evidence that is suppressed has the right to appeal from
12 an order granting a motion to suppress made under (a) of this
13 subsection, if the attorney for the state or other proponent certifies
14 to the court or other official granting the motion that the appeal is
15 not taken for purposes of delay. Such an appeal shall be taken within
16 thirty days after the date the order was entered and shall be
17 diligently prosecuted.

18 (11) The requirements of (1)(b)(ii) and (3)(d) of this section
19 relating to the specification of the facilities from which, or the
20 place where, a communication is to be intercepted do not apply if:

21 (a) In the case of an application with respect to the interception
22 of an oral communication:

23 (i) The application is by an investigative or law enforcement
24 officer and is approved by the attorney general, a prosecuting
25 attorney, or other attorney authorized to provide such approval under
26 section 2 of this act;

27 (ii) The application contains a full and complete statement as to
28 why such specification is not practical and identifies the person
29 believed to be committing the offense and whose communications are to
30 be intercepted; and

31 (iii) The court finds that such specification is not practical; and

32 (b) In the case of an application with respect to a wire or
33 electronic communication:

34 (i) The application is by an investigative or law enforcement
35 officer and is approved by the attorney general, a prosecuting
36 attorney, or other attorney authorized to provide such approval under
37 section 2 of this act;

38 (ii) The application identifies the person believed to be
39 committing the offense and whose communications are to be intercepted

1 and the applicant makes a showing that there is probable cause to
2 believe that the person's actions could have the effect of thwarting
3 interception from a specified facility;

4 (iii) The court finds that such showing has been adequately made;
5 and

6 (iv) The order authorizing the interception is limited to
7 interception only for such time as it is reasonable to presume that the
8 person identified in the application is reasonably proximate to the
9 instrument through which such communication will be transmitted.

10 (12) An interception of a communication under an order with respect
11 to which the requirements of (1)(b)(ii) and (3)(d) of this section do
12 not apply by reason of subsection (11)(a) of this section shall not
13 begin until the facilities from which, or the place where, the
14 communication is to be intercepted is ascertained by the person
15 implementing the interception order. A provider of wire or electronic
16 communication service that has received an order as provided for in
17 subsection (11)(b) of this section may move the court to modify or
18 quash the order on the ground that its assistance with respect to the
19 interception cannot be performed in a timely or reasonable fashion.
20 The court, upon notice to the government, shall decide such a motion
21 expeditiously.

22 NEW SECTION. **Sec. 4.** A new section is added to chapter 9.73 RCW
23 to read as follows:

24 (1) As part of a bona fide criminal investigation, the chief law
25 enforcement officer of a law enforcement agency or his or her designee
26 above the rank of first line supervisor may authorize the interception,
27 transmission, or recording of a conversation or communication by
28 officers under the following circumstances:

29 (a) At least one party to the conversation or communication has
30 consented to the interception, transmission, or recording;

31 (b) Probable cause exists to believe that the conversation or
32 communication involves an act of terrorism; and

33 (c) A written report has been completed as required by subsection
34 (2) of this section.

35 (2) The agency's chief officer or designee authorizing an
36 interception, transmission, or recording under subsection (1) of this
37 section shall prepare and sign a written report at the time of
38 authorization indicating:

1 (a) The circumstances that meet the requirements of subsection (1)
2 of this section;

3 (b) The names of the authorizing and consenting parties, except
4 that in those cases where the consenting party is a confidential
5 informant, the name of the confidential informant need not be divulged;

6 (c) The names of the officers authorized to intercept, transmit,
7 and record the conversation or communication;

8 (d) The identity of the particular person or persons, if known, who
9 may have committed or may commit the offense;

10 (e) The details of the particular offense or offenses that may have
11 been or may be committed and the expected date, location, and
12 approximate time of the conversation or communication; and

13 (f) Whether there was an attempt to obtain authorization pursuant
14 to RCW 9.73.090(2) and, if there was such an attempt, the outcome of
15 the attempt.

16 (3) An authorization under this section is valid in all
17 jurisdictions within Washington state and for the interception of
18 communications from additional persons if the persons are brought into
19 the conversation or transaction by the nonconsenting party or if the
20 nonconsenting party or such additional persons cause or invite the
21 consenting party to enter another jurisdiction.

22 (4) The recording of any conversation or communication under this
23 section shall be done in such a manner that protects the recording from
24 editing or other alterations.

25 (5) An authorization made under this section is valid for no more
26 than twenty-four hours from the time it is signed by the authorizing
27 officer, and each authorization shall independently meet all of the
28 requirements of this section. The authorizing officer shall sign the
29 written report required under subsection (2) of this section,
30 certifying the exact date and time of his or her signature. An
31 authorization under this section may be extended not more than twice
32 for an additional consecutive twenty-four hour period based upon the
33 same probable cause regarding the same suspected transaction. Each
34 such extension shall be signed by the authorizing officer.

35 (6) Within fifteen days after the signing of an authorization that
36 results in any interception, transmission, or recording of a
37 conversation or communication pursuant to this section, the law
38 enforcement agency which made the interception, transmission, or
39 recording shall submit a report including the original authorization

1 under subsection (2) of this section to a judge of a court having
2 jurisdiction which report shall identify (a) the persons, including the
3 consenting party, who participated in the conversation, and (b) the
4 date, location, and approximate time of the conversation.

5 In those cases where the consenting party is a confidential
6 informant, the name of the confidential informant need not be divulged.

7 A monthly report shall be filed by the law enforcement agency with
8 the administrator for the courts indicating the number of
9 authorizations granted, the date and time of each authorization,
10 interceptions made, arrests resulting from an interception, and
11 subsequent invalidations.

12 (7)(a) Within two judicial days of receipt of a report under
13 subsection (6) of this section, the court shall make an ex parte review
14 of the authorization, but not of the evidence, and shall make a
15 determination whether the requirements of subsection (1) of this
16 section were met. If the court determines that any of the requirements
17 of subsection (1) of this section were not met, the court shall order
18 that any recording and any copies or transcriptions of the conversation
19 or communication be destroyed. Destruction of recordings, copies, or
20 transcriptions shall be stayed pending any appeal of a finding that the
21 requirements of subsection (1) of this section were not met.

22 (b) Absent a continuation under (c) of this subsection, six months
23 following a determination under (a) of this subsection that probable
24 cause did not exist, the court shall cause a notice to be mailed to the
25 last known address of any nonconsenting party to the conversation or
26 communication that was the subject of the authorization. The notice
27 shall indicate the date, time, and place of any interception,
28 transmission, or recording made pursuant to the authorization. The
29 notice shall also identify the agency that sought the authorization and
30 shall indicate that a review under (a) of this subsection resulted in
31 a determination that the authorization was made in violation of this
32 section.

33 (c) An authorizing agency may obtain six-month extensions to the
34 notice requirement of (b) of this subsection in cases of active,
35 ongoing criminal investigations that might be jeopardized by sending
36 the notice.

37 (8) In any subsequent judicial proceeding, evidence obtained
38 through the interception or recording of a conversation or
39 communication pursuant to this section shall be admissible only if:

1 (a) The court finds that the requirements of subsection (1) of this
2 section were met and the evidence is used in prosecuting an offense
3 identified in subsection (1)(b) of this section, or the evidence is
4 used in accordance with section 6 of this act; or

5 (b) The evidence is admitted with the permission of the person
6 whose communication or conversation was intercepted, transmitted, or
7 recorded; or

8 (c) The evidence is admitted in a prosecution for a serious violent
9 offense as defined in RCW 9.94A.030 in which a party who consented to
10 the interception, transmission, or recording was a victim of the
11 offense; or

12 (d) The evidence is admitted in a civil suit for personal injury or
13 wrongful death arising out of the same incident, in which a party who
14 consented to the interception, transmission, or recording was a victim
15 of a serious violent offense as defined in RCW 9.94A.030.

16 Nothing in this subsection bars the admission of testimony of a
17 party or eyewitness to the intercepted, transmitted, or recorded
18 conversation or communication when that testimony is unaided by
19 information obtained solely by violation of RCW 9.73.030.

20 (9) Any determination of invalidity of an authorization under this
21 section shall be reported by the court to the office of the
22 administrator for the courts.

23 (10) Any person who intentionally intercepts, transmits, or records
24 or who intentionally authorizes the interception, transmission, or
25 recording of a conversation or communication in violation of this
26 section is guilty of a class C felony punishable according to chapter
27 9A.20 RCW.

28 (11) An authorizing agency is liable for twenty-five thousand
29 dollars in exemplary damages, in addition to any other damages
30 authorized by this chapter or by other law, to a person whose
31 conversation or communication was intercepted, transmitted, or recorded
32 pursuant to an authorization under this section if:

33 (a) In a review under subsection (7) of this section, or in a
34 suppression of evidence proceeding, it has been determined that the
35 authorization was made without the probable cause required by
36 subsection (1)(b) of this section; and

37 (b) The authorization was also made without a reasonable suspicion
38 that the conversation or communication would involve the unlawful acts
39 identified in subsection (1)(b) of this section.

1 NEW SECTION. **Sec. 5.** A new section is added to chapter 9.73 RCW
2 to read as follows:

3 (1) This section applies to pen registers and traps and traces as
4 defined in section 7 of this act when used to obtain information
5 regarding an act of terrorism.

6 (2) An investigative or law enforcement officer may seek and the
7 superior court may issue orders and extensions of orders authorizing
8 the installation or application and use of pen registers and traps and
9 traces as provided in this section. The request for an order shall be
10 under oath and shall include the identity of the officer seeking the
11 order and the identity of the law enforcement agency conducting the
12 investigation. The officer must certify that the information likely to
13 be obtained is relevant to an ongoing criminal investigation of
14 terrorism being conducted by that agency.

15 (3) If the court finds that the information likely to be obtained
16 by such installation or application and use is relevant to an ongoing
17 criminal investigation of terrorism and finds that there is probable
18 cause to believe that the pen register or trap and trace will lead to
19 obtaining evidence of terrorism, contraband, fruits of crime, things
20 criminally possessed, weapons, or other things by means of which an act
21 of terrorism has been committed or reasonably appears about to be
22 committed, or will lead to learning the location of a person who is
23 unlawfully restrained or reasonably believed to be a witness in an
24 investigation of such an act or for whose arrest there is probable
25 cause, the court shall enter an ex parte order authorizing the
26 installation or application and use of a pen register or a trap and
27 trace. The order shall specify:

28 (a) The identity, if known, of the person to whom is leased or in
29 whose name is listed the telephone line or other instrument or facility
30 to which the pen register or trap and trace is to be attached or
31 applied;

32 (b) The identity, if known, of the person who is the subject of the
33 criminal investigation;

34 (c) The attributes of the communications to which the order
35 applies, including the number or other identifier and, if known, the
36 location of the telephone line or other instrument or facility to which
37 the pen register or trap and trace is to be attached or applied, and,
38 in the case of a trap and trace, the geographic limits of the trap and
39 trace; and

1 (d) A statement of the act of terrorism to which the information
2 likely to be obtained by the pen register or trap and trace relates.

3 The order shall direct, if the applicant has requested, the
4 furnishing of information, facilities, and technical assistance
5 necessary to accomplish the installation of the pen register or trap
6 and trace. An order issued under this section shall authorize the
7 installation or application and use of a pen register or a trap and
8 trace for a period not to exceed sixty days. An extension of the
9 original order may only be granted upon: A new request for an order
10 under subsection (2) of this section; and a showing that there is a
11 probability that the information or items sought under this subsection
12 are more likely to be obtained under the extension than under the
13 original order. No extension beyond the first extension shall be
14 granted unless: There is a showing that there is a high probability
15 that the information or items sought under this subsection are much
16 more likely to be obtained under the second or subsequent extension
17 than under the original order; and there are extraordinary
18 circumstances such as a direct and immediate danger of death or serious
19 bodily injury to a law enforcement officer. The period of extension
20 shall be for a period not to exceed sixty days.

21 An order authorizing or approving the installation or application
22 and use of a pen register or a trap and trace shall direct that the
23 order be sealed until otherwise ordered by the court and that the
24 person owning or leasing the line or other facility to which the pen
25 register or trap and trace is attached or applied, or who has been
26 ordered by the court to provide assistance to the applicant, not
27 disclose the existence of the pen register or trap and trace or the
28 existence of the investigation to the listed subscriber or to any other
29 person, unless or until otherwise ordered by the court.

30 (4) Upon the presentation of an order, entered under subsection (3)
31 of this section, by an officer of a law enforcement agency authorized
32 to install or apply and use a pen register under this chapter, a
33 provider of wire or electronic communication service, landlord,
34 custodian, or other person shall furnish such law enforcement officer
35 forthwith all information, facilities, and technical assistance
36 necessary to accomplish the installation or application of the pen
37 register unobtrusively and with a minimum of interference with the
38 services that the person so ordered by the court accords the party with
39 respect to whom the installation or application and use is to take

1 place, if such assistance is directed by a court order as provided in
2 subsection (3) of this section.

3 Upon the request of an officer of a law enforcement agency
4 authorized to receive the results of a trap and trace under this
5 chapter, a provider of a wire or electronic communication service,
6 landlord, custodian, or other person shall install or apply the trap
7 and trace forthwith on the appropriate line or other facility and shall
8 furnish such law enforcement officer all additional information,
9 facilities, and technical assistance including installation or
10 application and operation of the device unobtrusively and with a
11 minimum of interference with the services that the person so ordered by
12 the court accords the party with respect to whom the installation or
13 application and use is to take place, if such installation or
14 application and assistance is directed by a court order as provided in
15 subsection (3) of this section. Unless otherwise ordered by the court,
16 the results of the trap and trace shall be furnished to the officer of
17 a law enforcement agency, designated in the court order, at reasonable
18 intervals during regular business hours for the duration of the order.

19 A provider of a wire or electronic communication service, landlord,
20 custodian, or other person who furnishes facilities or technical
21 assistance pursuant to this subsection shall be reasonably compensated
22 by the law enforcement agency that requests the facilities or
23 assistance for such reasonable expenses incurred in providing such
24 facilities and assistance.

25 No cause of action shall lie in any court against any provider of
26 a wire or electronic communication service, its officers, employees,
27 agents, or other specified persons for providing information,
28 facilities, or assistance in accordance with the terms of a court order
29 under this section. A good faith reliance on a court order under this
30 section, a request pursuant to this section, a legislative
31 authorization, or a statutory authorization is a complete defense
32 against any civil or criminal action brought under this chapter or any
33 other law.

34 (5)(a) Notwithstanding any other provision of this chapter, a law
35 enforcement officer and a prosecuting attorney or deputy prosecuting
36 attorney who jointly and reasonably determine that there is probable
37 cause to believe that an emergency situation exists that involves
38 immediate danger of death or serious bodily injury to any person that
39 requires the installation or application and use of a pen register or

1 a trap and trace before an order authorizing such installation or
2 application and use can, with due diligence, be obtained, and there are
3 grounds upon which an order could be entered under this chapter to
4 authorize such installation or application and use, may have installed
5 or applied and use a pen register or trap and trace if, within forty-
6 eight hours after the installation or application has occurred, or
7 begins to occur, an order approving the installation or application or
8 use is sought and issued in accordance with subsection (3) of this
9 section. In the absence of an authorizing order, such use shall
10 immediately terminate when the information sought is obtained, when the
11 request for the order is denied, or when forty-eight hours have lapsed
12 since the installation or application of the pen register or trap and
13 trace, whichever is earlier. If an order approving the installation,
14 application, or use is not obtained within forty-eight hours, any
15 information obtained is not admissible as evidence in any legal
16 proceeding. The knowing installation, application, or use by any law
17 enforcement officer of a pen register or trap and trace pursuant to
18 this subsection without seeking the authorizing order within forty-
19 eight hours of the installation or application of the pen register or
20 trap and trace shall constitute a violation of this chapter and be
21 punishable as a gross misdemeanor. A provider of a wire or electronic
22 communication service, landlord, custodian, or other person who
23 furnished facilities or technical assistance pursuant to this
24 subsection shall be reasonably compensated by the law enforcement
25 agency that requests the facilities or assistance for such reasonable
26 expenses incurred in providing such facilities and assistance.

27 (b) A law enforcement agency that authorizes the installation or
28 application of a pen register or trap and trace under this subsection
29 (5) shall file a monthly report with the administrator for the courts.
30 The report shall indicate the number of authorizations made, the date
31 and time of each authorization, whether a court authorization was
32 sought within forty-eight hours, and whether a subsequent court
33 authorization was granted.

34 NEW SECTION. **Sec. 6.** A new section is added to chapter 9.73 RCW
35 to read as follows:

36 (1)(a) Any investigative or law enforcement officer who, by any
37 means authorized by this section or section 3 or 4 of this act, has
38 obtained knowledge of the contents of any wire, oral, or electronic

1 communication, or evidence derived from such contents, may disclose
2 such contents or derivative evidence to another investigative or law
3 enforcement officer, including an investigative or law enforcement
4 officer of another state, to the extent that such disclosure is
5 appropriate to the proper performance of the official duties of the
6 officer making or receiving the disclosure; or

7 (b) Any investigative or law enforcement officer who, by any means
8 authorized by this section or section 5 of this act, has obtained
9 information from a pen register or trap and trace, or evidence derived
10 from such information, may disclose such contents or derivative
11 evidence to another investigative or law enforcement officer, including
12 an investigative or law enforcement officer of another state, to the
13 extent that such disclosure is appropriate to the proper performance of
14 the official duties of the officer making or receiving the disclosure.

15 (2)(a) Any investigative or law enforcement officer who, by any
16 means authorized by this section or section 3 or 4 of this act, has
17 obtained knowledge of the contents of any wire, oral, or electronic
18 communication, or evidence derived from such contents, may use such
19 contents or derivative evidence to the extent such use is appropriate
20 to the proper performance of his or her official duties.

21 (b) Any investigative or law enforcement officer who, by any means
22 authorized by this section or section 5 of this act, has obtained
23 information from a pen register or trap and trace, or evidence derived
24 from such information, may use such information or derivative evidence
25 to the extent such use is appropriate to the proper performance of his
26 or her official duties.

27 (3)(a) Any person who, by any means authorized by this section or
28 section 3 or 4 of this act, has received any information concerning the
29 contents of a wire, oral, or electronic communication, or evidence
30 derived from such contents, intercepted in accordance with section 3 or
31 4 of this act, may disclose such contents or derivative evidence while
32 giving testimony under oath or affirmation in any proceeding held under
33 the authority of this state or any political subdivision of this state.

34 (b) Any person who, by any means authorized by this section or
35 section 5 of this act, has received information obtained from a pen
36 register or trap and trace or evidence derived from such information,
37 may disclose such information or derivative evidence while giving
38 testimony under oath or affirmation in any proceeding held under the
39 authority of this state or any political subdivision of this state.

1 (4)(a) When an investigative or law enforcement officer, while
2 engaged in intercepting wire, oral, or electronic communications in the
3 manner authorized in section 3 or 4 of this act, intercepts wire, oral,
4 or electronic communications relating to an offense other than an
5 offense specified in the order of authorization, the contents of the
6 communications, and evidence derived from the contents, may be
7 disclosed or used as provided in subsections (1) and (2) of this
8 section. Such contents and derivative evidence may be used under
9 subsection (3) of this section when authorized by a superior court
10 where the court finds on subsequent application that the contents were
11 otherwise intercepted in accordance with the provisions of section 3 or
12 4 of this act. Such application shall be made as soon as practicable.

13 (b) When an investigative or law enforcement officer, while engaged
14 in obtaining information by any means authorized by section 5 of this
15 act, obtains information from a pen register or trap and trace relating
16 to an offense other than an offense specified in the authorizing order,
17 the information and evidence derived from it may be disclosed or used
18 as provided in subsections (1) and (2) of this section. Such
19 information and derivative evidence may be used under subsection (3) of
20 this section when authorized by a superior court where the court finds
21 on subsequent application that the information was otherwise obtained
22 in accordance with section 5 of this act. Such application shall be
23 made as soon as practicable.

24 (5)(a) Any investigative or law enforcement officer, or attorney
25 for the state or any political subdivision of the state, who by any
26 means authorized by this section or section 3 or 4 of this act has
27 obtained knowledge of the contents of any wire, oral, or electronic
28 communication, or evidence derived from such contents, may also
29 disclose such contents or derivative evidence to any federal
30 intelligence, protective, immigration, national defense, or national
31 security official to the extent that such contents or derivative
32 evidence includes foreign intelligence or counterintelligence, as
33 defined in section 3 of the National Security Act of 1947, 50 U.S.C.
34 Sec. 401(a), or foreign intelligence information, as defined in
35 subsection (19) of 18 U.S.C. Sec. 2510, to assist the official who is
36 to receive that information in the performance of his or her official
37 duties. Any federal official who receives information pursuant to this
38 provision may use that information only as necessary in the conduct of

1 that person's official duties subject to any limitations on the
2 unauthorized disclosure of such information.

3 (b) Any investigative or law enforcement officer, or attorney for
4 the state or any political subdivision of the state, who by any means
5 authorized by this section or section 5 of this act has obtained
6 information from a pen register or trap and trace or evidence derived
7 from such information, may also disclose such information or derivative
8 evidence to any federal intelligence, protective, immigration, national
9 defense, or national security official to the extent that such
10 information or derivative evidence includes foreign intelligence or
11 counterintelligence, as defined in section 3 of the National Security
12 Act of 1947, 50 U.S.C. Sec. 401(a), or foreign intelligence
13 information, as defined in subsection (19) of 18 U.S.C. Sec. 2510, to
14 assist the official who is to receive that information in the
15 performance of his or her official duties. Any federal official who
16 receives information pursuant to this provision may use that
17 information only as necessary in the conduct of that person's official
18 duties subject to any limitations on the unauthorized disclosure of
19 such information.

20 (6) Any federal investigative or law enforcement officer who
21 obtains information regarding an act of terrorism from the contents of
22 a wire, oral, or electronic communication or obtains such information
23 from the installation or application of a pen register or trap and
24 trace, or obtains any evidence derived from such information, may
25 disclose such information or derivative evidence while giving testimony
26 under oath or affirmation in any proceeding held under the authority of
27 this state or any political subdivision of this state, if such
28 information or derivative evidence was obtained in compliance with
29 federal law, and in a case in which no party to a communication has
30 consented to an interception, if such information or derivative
31 evidence was obtained through an interception that was also done with
32 prior judicial authorization whether or not such prior authorization
33 was required by federal law.

34 (7) No otherwise privileged wire, oral, or electronic communication
35 intercepted in accordance with, or in violation of, the provisions of
36 this act shall lose its privileged character.

37 NEW SECTION. **Sec. 7.** A new section is added to chapter 9.73 RCW
38 to read as follows:

1 As used in sections 2 through 6 of this act, the following terms
2 have the following meanings:

3 (1) "Act of terrorism" means any of the following offenses, or
4 conspiracy to commit any of the following offenses, as they are defined
5 in Title 9A RCW:

6 (a) Terrorism in the first degree;

7 (b) Terrorism in the second degree;

8 (c) Unlawful use or possession of a weapon of mass destruction; or

9 (d) Threatening acts of terrorism in the first degree.

10 (2) "Aggrieved person" means a person who was a party to any
11 intercepted wire, oral, or electronic communication or a person against
12 whom the interception was directed.

13 (3) "Computer" means an electronic, magnetic, optical,
14 electrochemical, or other high speed data processing device performing
15 logical, arithmetic, or storage functions, and includes any data
16 storage facility or communications facility directly related to or
17 operating in conjunction with such device, but such term does not
18 include an automated typewriter or typesetter, a portable handheld
19 calculator, or other similar device.

20 (4) "Contents," when used with respect to any wire, oral, or
21 electronic communication, includes any information concerning the
22 substance, purport, or meaning of that communication.

23 (5) "Electronic communication" means any transfer of signs,
24 signals, writing, images, sounds, data, or intelligence of any nature
25 transmitted in whole or in part by a wire, radio, electromagnetic,
26 photoelectronic, or photooptical system, but does not include:

27 (a) Any wire or oral communication;

28 (b) Any communication made through a tone-only paging device;

29 (c) Any communication from a tracking device;

30 (d) Electronic funds transfer information stored by a financial
31 institution in an electronic communication system used for the
32 electronic storage and transfer of funds.

33 (6) "Electronic communication service" means any service which
34 provides users the ability to send or receive wire or electronic
35 communications.

36 (7) "Electronic communication system" means any wire, radio,
37 electromagnetic, photooptical, or photoelectronic facilities for the
38 transmission of wire or electronic communications, and any computer

1 facilities or related electronic equipment for the electronic storage
2 of such communications.

3 (8) "Electronic storage" means (a) any temporary, intermediate
4 storage of a wire or electronic communication incidental to the
5 electronic transmission thereof; and (b) any storage of such
6 communication by an electronic communication service for purposes of
7 backup protection of such communication.

8 (9) "Investigative or law enforcement officer" means any officer of
9 the United States or of this state or a political subdivision of this
10 state, who is empowered by law to conduct investigations of or make
11 arrest for criminal offenses enumerated in the United States Code of
12 laws of this state, and any attorney authorized by law to prosecute or
13 participate in the prosecution of such offenses.

14 (10) "Oral communication" means any oral communication uttered by
15 a person exhibiting an expectation that such communication is not
16 subject to interception under circumstances justifying such
17 expectation, but such term does not include any electronic
18 communication.

19 (11) "Pen register" means a device which records or decodes
20 dialing, routing, addressing, or signaling information transmitted by
21 an instrument or facility from which a wire or electronic communication
22 is transmitted if the device does not record or decode the contents of
23 any communication, but the term does not include any device used by a
24 provider or customer of a wire or electronic communication service for
25 billing, or recording as an incident to billing, for communications
26 services provided by such provider or any device used by a provider or
27 customer of a wire communication service for cost accounting or other
28 like purposes in the ordinary course of its business.

29 (12) "Trap and trace" means a device or process which captures the
30 incoming electronic or other impulses which identify the originating
31 number or other dialing, routing, addressing, and signaling information
32 reasonably likely to identify the source of a wire or electronic
33 communication, but which device or process does not capture the
34 contents of any communication.

35 (13) "User" means any person or entity who (a) uses an electronic
36 communication service; and (b) is duly authorized by the provider of
37 such service to engage in such use.

38 (14) "Wire communication" means any transfer of the human voice
39 made in whole or in part through the use of facilities for the

1 transmission of communications by the aid of wire, cable, or other like
2 connection between the point of origin and the point of reception,
3 including the use of such connection in a switching station, furnished
4 or operated by any person engaged in providing or operating such
5 facilities for the transmission of intrastate, interstate, or foreign
6 communications.

7 **Sec. 8.** RCW 9.73.240 and 1989 c 271 s 206 are each amended to read
8 as follows:

9 (1) The attorney general shall have concurrent authority and power
10 with the prosecuting attorneys to investigate violations of RCW
11 9.73.200 through 9.73.230 (~~or RCW~~), 9.73.090, or sections 2 through
12 6 of this act and initiate and conduct prosecutions of any violations
13 upon request of any of the following:

14 (a) The person who was the nonconsenting party to the intercepted,
15 transmitted, or recorded conversation or communication; or

16 (b) The county prosecuting attorney of the jurisdiction in which
17 the offense has occurred.

18 (2) The request shall be communicated in writing to the attorney
19 general.

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